

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A  
JUDGE: CYNTHIA A. HOLLOWAY  
NO.: 00-143

Florida Supreme Court  
Case No.: SC00-2226

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**MOTION TO STRIKE JUDICIAL QUALIFICATIONS  
COMMISSION'S SUMMARY OF EVIDENCE ADDUCED AT  
TRIAL AND RESPONSE TO RESPONDENT HOLLOWAY'S  
TRIAL BRIEF**

Respondent, CYNTHIA A. HOLLOWAY, by and through her undersigned counsel, hereby moves the Chairman of the Hearing Panel to strike the JQC's pleading entitled "Judicial Qualifications Commission's Summary of Evidence Adduced at Trial & Response to Respondent Holloway's Trial Brief" filed on January 2, 2002, and in support would show the following:

1. At the conclusion of the two-day hearing before the Panel in this matter on October 16, 2001, the parties were both granted permission by the Court to file trial briefs. Specifically, Judge Jorgenson ordered each of the parties to file their respective trial briefs summarizing the evidence adduced

within seven days of the conclusion of the proceedings, or, in other words, on or before October 23, 2001.<sup>1</sup>

2. Respondent Cynthia A. Holloway timely filed her Trial Brief on October 23, 2001, even though the transcript of the proceedings, despite being expedited by the Respondent, was not made fully available to Respondent and her counsel until only a day or two prior to the deadline for submission of the parties' trial briefs.

3. Inexplicably, counsel for the JQC did not submit a Trial Brief on or before October 23, 2001, as ordered by Judge Jorgenson at the close of the proceedings.

4. Moreover, counsel for the JQC never requested an extension of time from the Panel or requested a stipulation from Respondent (although Respondent would not have had the power to extend a court-imposed deadline).

5. Respondent and her counsel were absolutely dumbfounded to receive a thirty-three page brief filed by the JQC not just a few days later, but **71** days beyond the time limit permitted by the Chairman. Further, the JQC has

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<sup>1</sup> See Closing Argument Transcript dated 10/16/01, Page 67, lines 7 through 9 (attached as Exhibit "A").

failed to provide any explanation or justification for its contumacious disregard for the time limits imposed by this Court.

6. The filing of this “trial brief” over two months beyond the deadline in an obvious disregard of the Chairman’s order is a sufficient basis for striking the entire trial brief. In addition, however, the trial brief of the JQC should also be stricken under Rule 1.140, Florida Rules of Civil Procedure, as it contains redundant, immaterial, impertinent, or scandalous matter.

7. Respondent has been severely prejudiced by this eleventh-hour attempt of Special Counsel to again try this case without the constraints of opposing counsel, the Panel, or the fundamental fairness and impartiality to which Respondent is entitled. The “trial brief” filed by Special Counsel is so fraught with irregularities (in its form, its content, and the peculiar circumstances surrounding its late filing) that the inescapable conclusion is that this trial brief is an attempt to improperly influence this Panel at a time when its deliberations have presumably begun and perhaps are nearly complete.<sup>2</sup>

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<sup>2</sup> Respondent does not possess any “inside information” as to the current status of the Panel’s deliberations on the charges. However, Judge Jorgenson made it quite clear at the close of these proceedings that the Panel intended to begin its deliberations immediately, which is supported by the very short time frame afforded to the parties to file their respective trial briefs, and that the Panel was expected to render a decision in a relatively short period of time. In particular, Judge Jorgenson stated at the conclusion of the proceedings:

8. The JQC's trial brief should be stricken as it contains misstatements of law in violation of Rule 1.410. For example, more than 2 months after the close of evidence, the JQC appears to have changed its position with respect to punishment. The "trial brief" filed by the JQC unequivocally seeks removal of Respondent from office. It would lead this Panel to believe that there is really no other alternative available. However, this is not the position that the JQC took in its closing argument on October 16, 2001<sup>3</sup> (and for good reason). If this same argument (that removal is the only appropriate punishment) had been made at trial, it would have drawn vehement objection from counsel for Respondent which presumably would have been sustained by the Chairman. The case law on this issue is quite clear that there are a variety of lesser punishments that are appropriate under the circumstances.

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"We'll be in recess until we receive our report and recommendations. I can't tell you how long it will take, but I can tell you that this panel has been rather speedy about these things, and we get things out much quicker than other panels that you've dealt with before."

(Closing Argument Transcript, dated 10/16/01, page 66, line 24 – page 67, line 5)  
(attached as Exhibit "B":)

<sup>3</sup> I submit to you that, you know, you have three decisions to make, a reprimand – - if you find that there were violations of the canons and already two of the violations have been admitted. Your choices are a reprimand, a suspension or a removal." (Transcript page 65, line 8 – Page 65, line 13). "At a minimum, it warrants a suspension. At a minimum." (Transcript Page 65, line 21 – Page 65, line 22) (attached as exhibit "C")

However, by making this unsound legal argument in a brief to which Respondent is not entitled to respond and at a critical time when deliberations are well under way (if not nearly complete), Respondent has suffered grievous prejudice.

9. The JQC's "trial brief" should also be stricken as it contains misstatements of fact that, while certainly supporting Special Counsel's position, are outside of the realm of any reasonable view of the evidence and as such rise to the level of inappropriate pleading under Rule 1.140. At the trial, Special Counsel never mentioned Respondent's alleged "lack of remorse" in closing argument. If Special Counsel had attempted at the trial to mislead the Panel into believing that Respondent "demonstrated an overall lack of willingness to recognize her transgressions"<sup>4</sup> this utter misstatement of fact would have drawn objection, and the Panel would have been reminded of the uncontroverted testimony of Respondent, Todd Alley, Judge Rogers Padgett, and Judge Stoddard regarding Respondent's extreme remorse.<sup>5</sup> In addition,

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<sup>4</sup> This statement is contained in the JQC's Judicial Qualifications Commission's Summary of Evidence Adduced at Trial & Response to Respondent Holloway's Trial Brief' filed on January 2, 2002, page 30.

<sup>5</sup> Judge Ralph Stoddard testified that Judge Holloway apologized for her behavior and that she was "absolutely" sincere in her apology. (Transcript, 10/15/01, Page 87, lines 20 through Page 88, line 4). Todd Alley, also testified regarding Respondent's remorse:

how could Respondent show remorse over charges that were ultimately dropped by the JQC as being without merit? The JQC would urge this Panel to recommend only the harshest punishment available for any judge who in the opinion of the JQC refuses to show remorse, which would in essence be any judge, such as Respondent, who chooses to contest the charges filed by the JQC. The Chairman is also well aware of the fact that Respondent attempted in every way to resolve this matter without the necessity of a hearing.

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Q: Did she express regret or remorse with regard to that incident?

Alley: She was tremendously upset with herself tremendously.

Q: Did she feel like she had let herself down?

Alley: Yes. She couldn't believe what she had done. She was - - I can't tell you how upset she was with herself. And she really couldn't believe she had done that.

Q: From that time forward to today, has her feelings about that incident changed in any respect, degree or magnitude?

Alley: Other than probably to feel even more remorseful about having done it, no. She - I can't tell you how badly this has affected her.

Judge Rodgers Padgett also testified about Respondent's extreme remorse over her actions:

Q: Did she regret the incident with Judge Stoddard?

Padgett: She has said that several times.

Q: She realized she made a mistake?

Padgett: Yeah, that it was dumb. She slammed her fist, "If I had my life to live over, I wouldn't have done that. And I'm willing to admit it," you know.

(Transcript, 10/6/01, Page 575, lines 8 through 23).

Finally, even Respondent herself testified as to her remorse:

Q: And do you believe that your actions in contacting Judge Stoddard were in accordance with these high ethical rules that you are talking about?

Resp.: Ms. Butchko, I've said no from the beginning, and I will say no today.

(Transcript, 10/16/01, Page 726, lines 10 through 14) (transcript excerpts attached as Composite Exhibit "D").

10. Finally, and in addition to all of the foregoing reasons, the JQC's trial brief should be stricken since permitting the Panel to consider the trial brief would undermine the fairness and impartiality of these proceedings and create an unfair advantage for the JQC.

11. The parties were directed to contemporaneously file trial briefs. The trial briefs were to be filed *at the same time* so that neither party would have an unfair advantage over the other. This notion of fair play was turned on its head by Special Counsel's unilateral decision to extend its filing deadline from 7 days to 78 days.

12. Certainly, Respondent will suffer prejudice if this Panel gives any consideration to the trial brief of the JQC which was prepared after a studied review of the transcript over months, as opposed to Respondent having only a day or two to review the expedited transcript before complying with the Court-ordered filing deadline.

13. Also, Respondent will suffer prejudice if the Panel considers the JQC's trial brief since it contains inappropriate argument and responses to Respondent's trial brief. If the JQC had complied with the Court's requirement that the trial briefs be filed contemporaneously, there would have been no opportunity to "respond" to the opposing party's brief. Therefore, any attempts

in the JQC's trial brief to "respond" to Respondent's trial brief are inappropriate and prejudicial to Respondent.

WHEREFORE, Respondent requests that this Court strike the pleading entitled "Judicial Qualifications Commission's Summary of Evidence Adduced at Trial & Response to Respondent Holloway's Trial Brief" filed on January 2, 2002, by the JQC and grant such other and further relief that the Court finds appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 2002, the original of the foregoing Motion to Strike has been furnished by U.S. Mail to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 with copies by U.S. Mail to:

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